

1950.



File No. O. Essen
supplies/50

Legal Dept.

A. BRANCH

Subject:— opinions under the
Essen supplies (Temporary Powers)
Act-1946

P28
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File No. O Essen Supplies/50

C O N T E N T S.

Legal Department File No. O. Esses, Supplies
1950

Sr. No.	Compilation No.	Subject.	Pages.
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O. Esses
Supplies 1950.

Opinions under the Esses
Supplies (Temporary Powers)
Act, 1946.

1. On. 17039
 1-12-1950

Suit No. 1440 of 1948
Limitation for a revision
application fresh complaint
necessary.

1-14.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Suit No. 1440 of 1948.

Goel Bros. & Co. Ltd Plaintiff

Versus

Hublal Kamatprasad.....Defendant.

Mr. M.V. Desai for the Plaintiffs.

Mr. W.A. Mody for the Defendant.

Coram:

Bhagwati J.

31st January 1950.

Oral Judgement:-

This is a Suit filed in the Plaintiff who acted as the Pakka Adatias of the Defendant for effecting several transactions in Bombay on his behalf in Lin seed, Black-Paper gold, cotton, castor-seeds and silver. A sum of Rs. 13447-4-0 is claimed by the Plaintiffs in respect of the said transactions.

The main defence put forward by the Defendant has been that there were included in the account transactions in Blackpepper which were forward contracts within the meaning of the Spices (Forward Contracts Prohibition) Order, 1944, which transactions being illegal, void and ~~inoperative~~ ^{void} should be excluded from the account; and if that were so done, his liability to the Plaintiffs would be wiped out altogether.

At the hearing before me various issues were raised, but the main argument was ~~on~~ on issues Nos. 2 and 3, viz.

- (2) Whether the transactions in suit in Blackpepper are Forward Contracts within the meaning of the Spices

(Forward Contracts Prohibition) Order, 1944 and if so, illegal void and/or inoperative; a n d

(3) Whether the plaintiff are entitled to maintain claim in respect of the said transactions in Black pepp~~er~~er.

So far as other issues are concerned, an agreement has been arrived at between the parties in the terms following:

"It is agreed between both/ the parties, without prejudice to the rights of either to appeal on the question of law in the event of the judgement being against him, that if I decide the questions of law in favour of the Plaintiff, there will be a decree for Rs.13447-4-0 with interest thereon at ^{per cent} 4 per annum from the date of the suit till judgement, no costs and interest on judgement at 4 per cent per annum till payment, and if I decide the questions of law in favour of the defendant, the suit will be dismissed, each party to bear and pay his own costs throughout."

The only question, therefore, which falls to be decided by me herein is whether the transactions in Black pepper were prohibited ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ by the Spices (Forward Contracts Prohibition) Order, 1944, and were as such illegal void and/or inoperative.

Spices (Forward Contracts Prohibition) Order, 1944, was promulgated on the 29th January 1944. It was promulgated for securing the efficient prosecution of the war and for maintaining supplies essential to the life of the community, and it prohibited certain transactions in spices, otherwise described as articles to which that order applied, were specified in the first column to the Schedule to the order and they included amongst these Item No. 7 "pepper". From the date ^{when} ~~which~~ was specified in the second column of that schedule, viz. the 2nd February 1944, all forward contracts ~~xxxxxxxxxxxxxxxxxxxxxxxx~~ in those articles were prohibited by virtue of clause (3) of that order. A "forward contract" was defined in clause 2(III) as a Contract for delivery at some future date of any article to which the

order applied. Under clause 5 the Central Government was empowered, by notification in the official gazette, to exclude any contract or class of contracts from the provisions of this Order. Such power was exercised by the Government of India and by a notification bearing the same date, 29th January 1944, the Central Government excluded the following classes of contracts from the provisions of the said Order, viz

- (1) Forward contracts for specific qualities or types of any article to which the said Order applies, and for specific delivery at a specified price, delivery orders, railway receipts or bills of lading against which contracts are not transferable to third parties.

It is clear that Black pepper which is the subject matter of the transactions in suit falls within the category of pepper which is one of the articles to which the ^{order} category applied. Black pepper is included in the category of pepper and it is impossible to argue that the transactions in Black pepper are not within the ban of this Order.

It was sought to be argued, however, by Counsel for the Plaintiff that these forward contracts in Black pepper which had been entered into between the Plaintiffs and the defendant were exempted by reason of the notification of the Central Government above referred to. The contracts were put in before me as Exhibit "A" and it was argued that they were forward ^{for specific qualities or type of pepper, being contracts} contracts for purchase or sale of Black Pepper, and that they were for specific deliveries at specified prices. The point however was that it could not be urged effectively before me that delivery orders, railway receipts or bills of lading against these contracts were not transferable to third parties. Railway receipts, delivery orders, bills of lading etc. are documents of title to goods and even though they might be made out in the name of a contracting party who is to take delivery himself under the terms of the contract, they should not be transferable to third parties in order to be within the exemption laid down by the notifications of the Central Government. On the face of the documents there may be nothing to show that anybody

else is interested in those goods and the goods would be deliverable prima facie to the person named in the documents of title. It would, however, be open to the party in whose name the railway receipt delivery order or bill of lading is made out to transfer the same to third parties by an appropriate act in that behalf by way of an endorsement or otherwise and if that were so the delivery order, bill of lading or railway receipt would be transferable to third parties and those contracts would then, in spite of being for specific qualities or type of the particular article and for specific delivery at specified price, would not be covered by the exemption. There is nothing before me to suggest that in respect of those contracts the delivery orders, railway receipts or bills of lading against them were not transferable to third parties. In the result, I have come to the conclusion that these forward contracts were not covered by the exemption and came within the ban of the Spices (Forward Contracts) Prohibition) Order, 1944.

A further point has, however, got to be considered, and it is whether this ban or prohibition continued at the date when the Suit transactions took place between the parties. The Spices (Forward Contracts Prohibition) Order 1944 was promulgated in exercise of the powers conferred by sub-rule (2) of Rule 81 of the Defence of India Rules. The Defence of India Act and the Rules made thereunder ceased to be operative from and after the 30th September 1946 and in view of the impending cessation of the operation of these Rules an Ordinance, being Ordinance No. 18 of 1946 was promulgated by the Central Government on the 25th September 1946 which was called the Essential Supplies (Temporary Powers) Ordinance 1946. It is an Ordinance to provide for the continuance during a limited period of powers to control the production, supply, and distribution of, and trade and commerce in certain commodities. The Preamble to the Ordinance mentioned:

"Whereas an emergency has arisen which makes it necessary to provide for the continuance during a limited period of powers of control the production, supply and distribution of, and trade and commerce in food stuffs (including edible oilseeds and oils),

Cotton and woolen textiles, paper(including newsprint) Petroleum products, spare parts of mechanically....propelled vehicles, coal iron steel and mica;" The clause 2 which contained the definitions *laid down in sub-clause (a) the definition* of "essential commodity" meaning thereby any of the following classes of commodities:-

- (i) foodstuffs,
- (ii) cotton and woolen textiles,
- (iii) paper,
- (iv) petroleum and petroleum products,
- (v) spare parts of mechanically propelled vehicles,
- (vi) ~~Spa~~ coal.
- (vii) iron and steel.
- (viii) mica.

Sub-clause (b) defined food-crops as inclusive of crops of sugar-cane, and subclause (c) defined "foodstuffs" as inclusive of edible oilseeds and oils. The rest of the clauses of ~~/xx~~ this Ordinance invested the Central Government with the powers for regulating or prohibiting the production, supply and distribution of and trade and commerce in essential commodities wherever it was thought necessary or expedient for maintain^{ing} or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices thereof to do so. Clause 5 of this Ordinance 18 of 1946 provided for the continuance in force of existing orders which would prima facie include the Spices (Forward Contracts Prohibition) Order 1944.

This Ordinance by its very nature had a limited duration and had to be supplanted by the Essential Supplies (Temporary Powers) Act, 1946 (India Act 24 of 1946) which was enacted by the Central Legislature on the 19th November 1946. That was an Act to provide for the continuance during the limited period of powers to control the production, supply and distribution of, and trade and commerce in, certain commodities. It followed closely the lines of the Ordinance No.18 of 1946 and put on the Statute Book in effect the provisions of the Ordinance ¹⁸ of 1946 which would not ~~xxxx~~ continue to be operative any further. (Contd.)

By section 17 of this Act the Essential Supplies (Temporary Powers) Ordinance, 1946 was repealed and certain savings of the orders and the actions taken under the Ordinance were enacted in the later part of the section. This Act, I have been informed was operative or in any event the provisions thereof were operative at the time when the transactions in suit took place between the parties.

The question which has been seriously agitated before me by Counsel for the Plaintiff has been that after the cessation of the operation of the Spices (Forward Contracts Prohibition) Order 1944, there was no Ordinance or enactment in force which prohibited any transactions in Black pepper. Both the Ordinance No. 18 of 1946 and the Essential Supplies (Temporary Powers) Act, 1946 covered what were defined therein as essential commodities which meant ^{alia} internal foodstuffs. Though they were made inclusive of edible oilseeds and oils, they certainly did not exclude Black pepper which was a species of the generic term Spices. It was urged before me that even though spices may be mixed up with food in order to make it relishable, they did not comprise food or were not included in the category of food and therefore were out of the purview of the Ordinance as well as the Act. It was also urged that if the definition of food stuffs was to include within it anything which was edible like oilseeds and oils, there was no necessity at all for the Legislature ^{were} to specially enact that food stuffs should be inclusive of edible oilseeds and oils ^{because by the very nature the edible oilseeds and oils were staple, they were eaten and consumed by the public as part of} (Contd)

9. 13

part of or mixed with the foodstuffs. Nobody ever consumed oilseeds and oils by themselves as substantive articles of food but they were mixed up with the foodstuffs in order to make the food relishable just like spices which also were not by themselves substantive articles of food but were mixed up with the food stuffs in order to make them relishable. The very reason why the foodstuffs were defined as inclusive of edible oilseeds and oils brought the spices also outside the category of foodstuffs which otherwise would have included the same.

Apart from these prohibitions of the Ordinance and the Act which were referred to in this behalf, my attention was also drawn by Counsel for the Plaintiff, to the definitions of food foodstuffs obtaining in the ^eCornish Oxford Dictionary where foodstuffs ~~stuffs~~ are described as things used as food and food is described as ^evituals nourishment, provisions. Provision is no doubt ~~is~~ a wide term and if one may be justified in taking judicial notice of what is usually sold by a provision vendor, provision might in a conceivable case include spices. They are, however, to be taken in conjunction with the other expressions which are to be found against the word 'food' victuals, and nourishment and in that context it can be argued that provision ^{means only the substantive food provision} and not what are otherwise described as food adjuncts for example chillies, cinnamon, cloves ginger, turmeric and nutmegs not to leave out of the enumeration assapholida. These are really food adjuncts and not foodstuffs properly described as such and that was the argument which was advanced by Counsel for the plaintiffs.

Counsel for the defendant, on the other hand, drew my attention to the observations of Hawkins, J. in James Vs. Jones (1894) 1 Q.B. 304 at page 309;

"We do not, however, in anything we have said intend to convey it as our opinion that nothing can be deemed to be an article of food unless it be made up into an eatable or drinkable form and fit for immediate use, for ^{we have no doubt that the Substantive and requisite} materials for making and which are to form part of the unadulterated article ~~when~~ made e-g- flour, butter, salt, mustard, pepper, etc....

etc..... are articles of food; for though nobody would ordinarily dream of eating them alone, yet they are articles intended to form substantial components of articles of food, or to be eaten as adjuncts thereto. Such however, is not the character of baking power.

On a consideration of these rival contentions which have been urged before me, I accept the contention of Counsel for the Plaintiffs. The spices which were the subject-matter of the prohibition order 1944 were merely food adjuncts and they were not foodstuffs, and I am fortified in this conclusion of mine by the very observations of Hawkins, J. which were relied upon by Counsel for the defendant. Mr. Justice Hawkins himself observed that even though nobody would ordinarily dream of eating them alone, yet they ^{are} articles intended to form substantial components of articles of food, or to be eaten as adjuncts thereto. These may have been prevalent at the time when the Spices (Forward Contracts Prohibition) Order, 1944 was promulgated included within the ban or prohibition. This prohibition went by the lapse of time when on the 30th September 1946 the Defence of India Act and the Rules framed thereunder ceased to be in operation. The Government, however, in view of the impending event thought of promulgating an ordinance which was Ordinance No. 18 of 1946 providing for certain controls and regulations in regard to what were defined by them as "essential commodities" they included within the definition thereof "food stuffs" and not "food adjuncts". When food adjuncts were thought of in the shape of edible oilseeds and oils they took particular care in the definition clause itself to make foodstuffs inclusive of edible oilseeds and oils, and that is what one finds in the preamble as well as the definition clause. As I have stated earlier, these being food adjuncts which were mixed with foodstuffs in order to make them relishable to make the food ultimately prepared relishable, were when it came to edible oilseeds and oils, specially provided for, but were not so provided for when it came to spices. On a perusal of the relevant provisions of the ordinance and the Act which I have referred to, I have therefore come to the

conclusion that so far as the food adjuncts are concerned the only things which were included within the Ordinance and the Act of 1946 were edible oilseeds and oils and no other, with the result that black pepper being one of the spices and food adjuncts not being specially treated in this manner was withdrawn from the prohibition of the ban on and ^{after} the 30th September 1946.

In connection with this argument my attention was also drawn to a passage from Halsbury Laws of England, Hallsham Edition, Volume 15, page ¹³⁷ where the definition of food has been given. That definition lays down:

"For the purposes of the Act the term "food" includes every articles used for food by man, other than drugs or water and any article which ordinarily enters into or is used in the composition or preparation of human food and also includes flavouring matters and condiments."

This is the definition for the purposes of the Food and Drugs (Adulteration) Act 1928. The same sort of definition is to be found in our Bombay Act 5 of 1925 which is Bombay Prevention of Adulteration Act. Section 5 of the Act defined food in identical terms. It was urged from this that flavouring matter i.e. spices therefore should be included in the definition of food and that being so foodstuffs which are the subject matter of the enactment of the Ordinance No. 18 of 1946 and the Act of 1946 could also include the Black pepper. I am not inclined to accept this argument. A definition for the purposes of the Prevention of Adulteration in food and Drugs or to prevent the Adulteration of articles of food and the sale of such adulterated ^{at} articles is quite different from the definition of foodstuffs to be found in the Ordinance No. 18 of 1946 and the Act 1946 Articles of Food may be prepared from foodstuffs which go to substantially make the same mixed up as they would be with the food adjuncts in the shape of flavouring materials or spices. It is with a view to preserve public health that this enactment for the Prevention of Adulteration has been enacted by the Legislature. In so far as in the articles of food the substantive foodstuffs or food grains

would be mixed up⁴ with these food adjuncts viz spices etc., there is ample reason that the definition of food for the purposes of the Prevention of Adulteration Acts must necessarily be wide. When, however, you come to the provisions of the type of Ordinance No. 18 of 1946 and the Act 1946, these being provisions enacted for the purpose of controlling and regulating transactions in particular commodities which are considered essential commodities, no such argument would apply in favour of the food adjuncts⁵.

Under all the circumstances which I have mentioned above, I have therefore come to the conclusion that the forward contracts in Black pepper which were entered into between the plaintiffs and the defendant and which formed part of the transactions in suit were not banned or prohibited by any provisions of law and were lawful transactions, losses in respect of which the defendant was bound to pay to the plaintiffs.

I will, therefore, answer the only two issues which have been the subject-matter of this contest before me, viz. issues Nos. 2 and 3 as under :-

(2) In the negative.

(3) In the affirmative.

The result therefore, will be that in terms of the agreement which is recorded by me in the beginning of this Judgement of mine, there will be a decree in favour of the Plaintiffs for Rs. 13447-4-0 with interest thereon at 4 per cent per annum from the date of the suit till judgement and interest on judgement at 4 per cent per annum till payment.

There will be no order as to costs of the suit.

In this case, the accused was charged with the offence of using corrugated iron sheets, released in his favour for purposes other than those mentioned in the permit. The accused had applied for and obtained a permit for the purpose of roofing his house and corrugated iron sheets were issued to him in pursuance of that permit. But they were not used by him for the roofing of his house. On the other hand certain other corrugated iron sheets (the source of which is not disclosed by the accused) were used by him for his shop. The Magistrate before whom he was tried for an offence under clause 8 of the Iron and Steel Control of Production and Distribution Order, 1941, read with rule 81(2) of the D.I. Rules, read with section 7 of the Essential Supplies Act, 1946, discharged him on 27-2-1950.

2. The reasoning of the Magistrate is very difficult to understand. He says that because some Ambalal had accepted delivery of the corrugated iron sheets on behalf of the accused, it is that Ambalal who should have been prosecuted. In this case, Ambalal happens to be the name of the building contractor whose services were engaged by this accused. But it also appears that he was not the man who had accepted the delivery of the goods. Even if we assume that some one else had accepted the delivery on behalf of the accused the responsibility remained on the accused to see that he used the released goods for the purpose for which he had applied for and for no other purpose.

3. The usual limitation of 6 months has expired and the only remedy open is to file a fresh complaint. But it is in very rare cases that fresh complaints would be admitted, and speaking for myself, I am not very sanguine on this point. It is not known why the Provincial Iron and Steel Rationing Officer did not move in good time.

R.L.S.

Office of the R.L.A.

The usual limitation for a revision application to set aside the order of discharge has ~~along~~ expired in August 1950; and no remedy in that direction is now open.

However, a fresh complaint can be filed against the offenders, especially in the light of the Magistrate's judgement.

Sd. P.M.Lad.
1/12

Remembrancer of Legal Affairs.

U.R. to Labour and Housing Department No. 17039
dated the 1st December 1950.

VGP. 2-7-56.

~~2/18/7~~